

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LEONCIO LORENZO,)
)
) No. C10-2497 BZ
)
Plaintiff(s),) **ORDER REMANDING CASE**
)
v.)
)
BANK OF AMERICA,)
)
)
Defendant(s).)
_____)

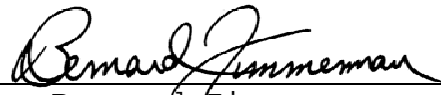
In court on July 21, 2010, plaintiff dismissed his tenth cause of action, which stated a federal claim.¹ Defendants contend that plaintiff's request for rescission and a temporary restraining order are in fact usury claims, and are therefore preempted by federal law under Beneficial Nat'l Bank v. Anderson, 539 U.S. 1 (2003). Plaintiff complains that the loan was "not suited for his financial circumstances" (§ 14),

¹ All parties have consented to my jurisdiction pursuant to 28 U.S.C § 636(c) for all proceedings, including entry of final judgment.

1 not that it was usurious. Under the well-pleaded complaint
2 rule, plaintiff's decision not to assert a usury claim is
3 dispositive, regardless of whether the facts might support
4 such a claim. Caterpillar, Inc. v. Williams, 482, U.S. 386,
5 392 (1987). Thus, preemption does not create federal
6 jurisdiction.

7 Plaintiff having dismissed the only federal claim, the
8 Court declines to exercise supplemental jurisdiction over the
9 remaining claims as they are all state claims and there have
10 been no substantial proceedings in this court. Plaintiff's
11 motion to remand is **GRANTED**. Plaintiff's motion for
12 attorney's fees is **DENIED**. The Clerk is directed to transfer
13 the case to the San Mateo County Superior Court.

14 Dated: July 26, 2010

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16 Bernard Zimmerman
United States Magistrate Judge

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